IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Tikam Singh Vs. State of Rajasthan

S.B.CR.MISC. IIIRD BAIL APPLICATION NO.4282/2006

DATE OF ORDER :: October 10, 2006

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.B.S.Rathore, for the petitioner.
Mr.Ashok Upadhyaya, Public Prosecutor.
Mr.Mahesh Bora, for the complainant.

BY THE COURT:

I have heard learned counsel for the petitioner and the Public Prosecutor as also the counsel appearing for the complainant. Carefully gone through the challan papers and the statements of PW.1 Sawal Ram, PW.2 Teja Ram, PW.3 Dinesh Kumar, PW.4 Bachna Ram, PW.5 Dr. Devendra Solanki and PW.6 Dhara Ram recorded by the trial court.

It is contended by the learned counsel for the petitioner that PW.1 Sawal Ram is the author of the FIR Ex.P/1. The

allegation against the present petitioner in the FIR is that deceased was run over by the tractor driven by him and caused his death by crushing him under the wheels of the tractor. The allegation of inflicting knife injuries is against Daler Singh. Learned counsel for the petitioner submits that PW.1 Sawal Ram, who is the author of the first information report has been examined by the trial court and made a different statement than the version given in FIR. In the FIR he came with a different story alleging that the knife injuries were inflicted by Daler Singh. In the first information report lodged by PW.1 Sawal Ram, it has been alleged that while PW.1 along with Om Prakash and PW.6 Dhara Ram was sitting near to Kesaria Kanwarji-ka-Than, at that time, the present petitioner came driving a tractor along with two persons viz. Daler Singh and Shivdan Singh and Daler Singh inflicted the knife injuries to the deceased Mohan Lal and when Mohan Lal started running, he was surrounded by three persons viz. Bhagwan Ram, Bhabhoot Ram and Chutra Ram and thereafter again it is alleged that Daler Singh inflicted knife injuries to deceased Mohan. In the first information report, the allegation against the present petitioner is that the deceased was run over by the tractor driven by the petitioner and caused the death by crushing him under the wheels. PW.6 is the another eye-witness, his statement is contradictory to the statement of PW.1 and he came with the case that the deceased was run over

by the tractor driven by the present petitioner.

I have also gone through the statements of other two witnesses, who were named in the first information report viz. Om Prakash and Smt. Satki Devi, the wife of the deceased recorded by the police under section 161 Cr.P.C. Both the witnesses have also stated that the deceased was run over by a tractor driven by the present petitioner. I have also gone through the statement of PW.5 Dr. Devendra Solanki, who conducted the autopsy of the deceased. In whole of his statement prima facie it nowhere appears that the deceased suffered any injury by tractor. He has categorically stated that the injuries found on the person of deceased cannot be of tractor wheel. The injuries suffered by the deceased except the fracture of ribs, which is said to be grievous in nature, have been stated by the doctor to be of superficial. There are nineteen injuries on the person of the deceased; ten by sharp and nine by blunt but except injuries causing fracture of 6^{th} 7^{th} and 8^{th} ribs all the injuries are superficial.

It is contended by the learned Public Prosecutor and the counsel appearing for the complainant that there are other witnesses viz. Pitambar Dass, Madho Singh and Hasam Khan, who came with a case that it was the present petitioner, who

inflicted the knife injuries to the deceased. The case set up by the author of the FIR and the witnesses named in the FIR is that the deceased was run over by the tractor driven by the petitioner, whereas these witnesses came with a totally different story that the petitioner inflicted knife injuries.

Keeping in view the statement of the Doctor and the contradictory statements of the author of the FIR PW.1 and PW.6, who are alleged to be the eye-witnesses as also the statement of Om Prakash and Satki Devi, who were named as eye-witnesses in the FIR recorded by the police under section 161 Cr.P.C., it prima facie appears that the prosecution story is not at all consistent. Keeping in view the contradictory statements of PW.1 eye-witness and author of the FIR and PW.6 as also the statement of PW.5 Dr. Devendra Solanki, without commenting on the merit of the case, which may prejudice the case of the either party at the trial, having considered the totality of facts and circumstances of the case and taking into account the oral arguments advanced by both the parties, I think it just and proper to enlarge the accused petitioner on bail.

Accordingly, this bail application filed under Sec. 439 Cr.P.C. is allowed and it is directed that petitioner Tikam Singh s/o Shiv Dan Singh be released on bail in CR No.36/2005 P.S.

Jaitaran provided he furnishes a personal bond in a sum of Rs.50,000/- with two sound and solvent sureties in the sum of Rs.25,000/- each to the satisfaction of learned trial court for his appearance before that court on each and every date of hearing and whenever called upon to do so till the completion of the trial.

(H.R.PANWAR),J.

m.asif/-